

# **EXHIBIT A**

MICHAEL K. JEANES  
Clerk of the Superior Court  
By Shannon LaSpaluto, Deputy  
Date 11/02/2012 Time 16:38:31

Description	Amount
CASE# CV2012-016884	
CIVIL NEW COMPLAINT	301.00
TOTAL AMOUNT	301.00
Receipt# 22560903	

1 Alan M. Schiffman, SBN 004257  
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11 erin@ronstadtllaw.com

9 Attorneys for Plaintiff

10 IN THE SUPERIOR COURT OF ARIZONA  
11 IN AND FOR MARICOPA COUNTY

12 Herb Nelson, a married man,  
13  
14 Plaintiff,

No. CV2012-016884

14 v.

COMPLAINT

15 Liberty Life Assurance Company of Boston  
16 Group Long Term Disability Insurance  
17 Policy No. GF3-850-289008-01, an ERISA  
18 benefit plan; HD Supply, Inc., a plan  
19 administrator,

(Unclassified Civil Case: ERISA)

Defendants.

20 For his claims against Defendants Liberty Life Assurance Company of Boston  
21 Group Long Term Disability Insurance Policy No. GF3-850-289008-01 (the "Plan") and  
22 HD Supply, Inc. ("HD Supply"), Plaintiff Herb Nelson ("Nelson") alleges as follows:

23 **JURISDICTION, VENUE AND PARTIES**

- 24 1. This action arises under the Employee Retirement Income Security Act of  
25 1974, 29 U.S.C. §§ 1001 et seq. ("ERISA").
- 26 2. The Plan is a purported ERISA benefit plan established and maintained by  
27 HD Supply for the benefit of its employees. The Plan is a welfare benefit plan that  
28 offered group long-term disability ("LTD") benefits.

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1           3.     HD Supply is the Plan Sponsor and Employer.

2           4.     Upon information and belief, HD Supply is the Plan Administrator and has  
3 not properly delegated discretionary authority to any other entity.

4           5.     The Liberty Life Assurance Company of Boston ("Liberty") is the Claims  
5 Administrator for the Plan and acts on behalf of the Plan.

6           6.     HD pays premiums for the Plan, and Liberty administers the benefits.

7           7.     The Plan, Group Policy Number GF3-850-289008-01, was issued by  
8 Liberty to HD Supply in the State of Georgia and has an effective date of January 1,  
9 2009.

10          8.     At all relevant times, Nelson was a participant and beneficiary of the Plan  
11 as an employee of HD Supply.

12          9.     Nelson is a resident of Maricopa County, Arizona. Nelson was a resident  
13 of Maricopa County, Arizona at all relevant times.

14          10.    The Plan and Liberty are large companies with their principal place of  
15 business in the State of Massachusetts. HD Supply has its principal place of business in  
16 Atlanta, Georgia. Defendants are licensed and authorized to do business in Maricopa  
17 County, Arizona, and reside and are found within Maricopa County within the meaning  
18 of the jurisdiction and venue provisions of ERISA, 29 U.S.C. § 1132 and 28 U.S.C. §  
19 1391.

20          11.    This Court has jurisdiction over the subject matter of this action under  
21 ERISA, 29 U.S.C. §§ 1132(a), 1132(e)(1), and 28 U.S.C. §§ 2201-02 (declaratory  
22 judgments).

23          12.    Venue is proper in this Court under ERISA, 29 § 1132(e)(1) and 28 U.S.C.  
24 § 1391(b).

25          13.    Nelson satisfied all of the jurisdictional prerequisites to filing a claim in  
26 state court, and his claim is timely before this Court.

15. Upon information and belief, Liberty had authority to make final decisions regarding the payment of disability benefits for the Plan and acted as a fiduciary of the Plan. Accordingly, Nelson is informed and believes that Liberty is either a "named fiduciary" of the Plan, pursuant to 29 USC § 1133(2); and/or a "deemed fiduciary" pursuant to 29 USC § 1002 (21)(A); and/or a "designated fiduciary," pursuant to 29 USC § 1105(c)(1)(B).

16. HD Supply provided certain HD Supply employees with LTD insurance pursuant to the Plan and the Policy.

18. Under the terms of the Plan, HD Supply promises and becomes obligated to pay covered LTD insurance benefits when Nelson becomes "disabled" from performing the "Material and Substantial Duties" of his "Own Occupation" during the first 24 months for which LTD benefits are paid. Thereafter, Nelson must be disabled from "Material and Substantial Duties of Any Occupation" until the end of the Maximum Benefit Period if he is to continue receiving LTD benefits. HD Supply must pay 60% of the first \$4,400.93 of Nelson's Predisability Earnings, minus any "Deductible Income."

-3-

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1 Disability began. The Covered Person's occupation will be considered as the Covered  
2 Person's occupation as it is normally performed in the national economy.

3 20. Prior to becoming disabled, Nelson was an Inside Sales Order Clerk  
4 making an annual salary of \$52,811.20.

5 21. HD Supply administered the Plan in Arizona to its employees, including  
6 Nelson.

7 22. Among his disabling symptoms, Nelson became disabled in June 2, 2011  
8 due to a left ankle fracture as a result of a motorcycle accident and lymphedema, an  
9 incurable disease.

10 23. Liberty, acting as the claims administrator and at all times as an agent for  
11 HD Supply, found Nelson to be disabled under the Plan as of June 2, 2011. Nelson  
12 received short-term disability ("STD") benefits beginning on June 2, 2011 through  
13 August 31, 2011. After a 90-day benefit waiting period, Liberty approved LTD benefits,  
14 payable as of September 1, 2011.

15 24. Liberty administered both Nelson's STD and LTD benefits claims.

16 25. Liberty found Nelson no longer disabled as of September 8, 2011.

17 26. Nelson timely appealed the Liberty's initial denial on or about October 17,  
18 2011.

19 27. On November 4, 2011, Liberty issued its final denial, terminating LTD  
20 benefits as of September 8, 2011.

21 28. Nelson's medical conditions never improved and worsened since he was  
22 initially approved for STD and then subsequently LTD benefits.

23 29. Nelson continues to be disabled as defined by the Plan for LTD benefits  
24 eligibility.

25 30. Nelson qualified for Social Security Disability Benefits and was found  
26 totally disabled by the Social Security Administration as of June 1, 2011.

27 31. Nelson's claims are subject to *de novo* review.  
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1 capricious, an abuse of discretion, not supported by substantial evidence and was clearly  
2 erroneous and in violation of § 503 of ERISA.

3 42. Defendants' determination that Nelson was not entitled to benefits was  
4 tainted by a structural conflict of interest that requires that its decision be reviewed with  
5 increased skepticism.

6 43. Defendants' procedural violations of ERISA and its regulations require  
7 that the decision be reviewed with increased skepticism.

8 44. Liberty improperly inserted terms into the Plan that substantially altered  
9 the definition of disability under which Nelson is entitled to benefits.

10 45. Liberty improperly ignored the opinions of Nelson's treating physicians in  
11 favor of a nurse review and improperly relied on new evidence to uphold its benefits  
12 denial.

13 46. Defendants failed to administer the claim in Nelson's best interests as a  
14 beneficiary under the Plan in violation of its fiduciary duties under ERISA.

15 47. Nelson has exhausted his administrative remedies.

16 48. Defendants are not entitled to an arbitrary and capricious standard of  
17 review of their decision in this action.

18 49. Pursuant to the coverage provided in the Plan, to ERISA 29 U.S.C. §  
19 1132(a)(1)(B), and to applicable federal and state common law, Nelson is entitled to  
20 recover all benefits due under the terms of the Plan, and to enforce his rights under the  
21 Plan.

22 50. Nelson is entitled to reinstatement of any other employee benefits that  
23 were terminated, discontinued, or suspended as a result of the termination of his  
24 disability benefits.

25 51. Pursuant to 29 U.S.C. § 1132(g), Nelson is entitled to recover his  
26 attorneys' fees and costs incurred herein from Defendants.  
27  
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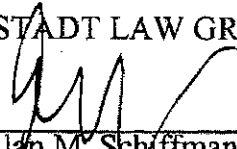
1           52. Nelson is entitled to prejudgment interest on the benefits to which he is  
2 entitled and on his damages at the highest legal rate until paid.

3           WHEREFORE, Nelson prays for entry of judgment against Defendants as  
4 follows:

- 5           A. For all past and future LTD benefits under the terms of the Plan;  
6           B. Enforcing Nelson's rights under the terms of the Plan;  
7           C. Clarifying and determining Nelson's rights to future benefits under the  
8 terms of the Plan;  
9           D. For an award of Nelson's attorneys' fees and costs incurred herein;  
10          E. For an award of prejudgment interest on benefits and damages at the  
11 highest legal rate until paid; and  
12          F. For such and further relief as the Court deems just and reasonable.  
13

14           Dated this 2<sup>nd</sup> day of November 2012,  
15

16                           SCHIFFMAN LAW OFFICE, P.C.  
17                           and  
18                           RONSTADT LAW GROUP, P.L.L.C.

19           By:   
20                           Alan M. Schiffman 4257  
21                           Attorneys for Plaintiff  
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MICHAEL K. JEANES, CLERK  
BY *A. Lapaluta* DEP  
FILED

12 NOV -2 PM 4:37

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13 erin@ronstadtlaw.com

14 Attorneys for Plaintiff

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IN THE SUPERIOR COURT OF THE STATE OF ARIZONA  
IN AND FOR THE COUNTY OF MARICOPA

14 Herb Nelson, a married man,

15  
16 Plaintiff,

17 vs.

18 Liberty Life Assurance Company of Boston )  
19 Group Long Term Disability Insurance )  
20 Policy No. GF3-850-289008-01, an ERISA )  
21 Benefit plan; HD Supply, Inc., a plan )  
22 administrator, )  
23  
24 Defendants. )  
25  
26

CV2012-016884

CIVIL ACTION NO.:

CERTIFICATE OF COMPULSORY  
ARBITRATION

SCHIFFMAN LAW OFFICE, P.C.

By:

**Alan M. Schiffman**  
**Attorneys for Plaintiff**

ORIGINAL of the foregoing  
delivered this 2<sup>nd</sup> day of October,  
2012 to:

Court Administrator  
Maricopa County Superior Court  
201 West Jefferson  
Phoenix, Arizona 85003

Office Distribution

SUPERIOR COURT OF ARIZONA  
MARICOPA COUNTY

**\*\*FILED\*\***

02/06/2013

by Superior Court Admin  
on behalf of Clerk of the  
Superior Court

02/02/2013

COURT ADMINISTRATION

Cl. Admin  
Deputy

Case Number: CV2012-016884

Herb Nelson

V.

Liberty Life Assurance Company Of Boston Group Long Term Disability Insurance

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The Judge assigned to this action is the Honorable Maria Del Mar Verdin

NOTICE OF INTENT TO DISMISS FOR LACK OF SERVICE

You are hereby notified that the complaint filed on 11/02/2012 is subject to dismissal pursuant to Rule 4 (i), Arizona Rules of Civil Procedure. The deadline for completing service is 03/04/2013. If no judge has extended time for completing service and no defendants have been served by this date, this case will be dismissed.

**Superior Court of Maricopa County - integrated Court Information System**

**Endorsee Party Listing**

Case Number: CV2012-016884

Party Name	Attorney Name	
Herb Nelson	ALAN M SCHIFFMAN	Bar ID: 004257

SCHIFFMAN LAW OFFICE, P.C.  
 4506 North 12<sup>th</sup> Street  
 Phoenix, AZ 85014  
 Phone: (602) 266-2667 Fax: (602) 266-0141

MICHAEL R. JEANES, CLERK  
 BY *K. Kee*  
 FILED

13 FEB 12 PM 4:14

IN THE SUPERIOR COURT OF THE STATE OF  
 ARIZONA IN AND FOR THE COUNTY OF MARICOPA

HERB NELSON,

Plaintiff,

vs.

LIBERTY LIFE ASSURANCE COMPANY OF  
 BOSTON GROUP LONG TERM DISABILITY  
 INSURANCE POLICY NO. GF3-850-289008-01, an  
 ERISA Benefit Plan; HD SUPPLY, INC., a Plan  
 Administrator,

Defendants.

Case No: CV2012-016884  
 AFFIDAVIT OF  
 SERVICE OF PROCESS

Affiant being duly sworn, states: I am qualified to serve process in this cause, under the applicable laws of the State of Arizona. I received the following documents in this action: from SCHIFFMAN LAW OFFICE, P.C., and in each instance I served a copy of each document listed above on those named below at the time and place shown in the manner indicated below:

Upon: Receptionist, Gail Treddin.  
 Address: Liberty Life Assurance Company of Boston, 9 Riverside Road, Weston, MA 02493

On 2/6/2013 at the hour of: 4:00 a.m./p.m. of said day.  
(mm/dd/yyyy) (time)

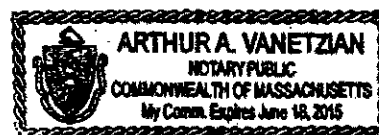
- ☒ In person at his/her place of employment.  
☐ In person at his/her residence.  
☐ In person at a location other than residence: \_\_\_\_\_

Gender	Race	Height	Weight	Hair	Eyes	DOB
F	C	5'	145	Red	Blue	1949

Affiant: *Sarah Jeanes* Sarah Jeanes  
(signature) (printed name)

Subscribed and sworn to before me this 6 day of February, 2013.

Notary Public: \_\_\_\_\_  
 My Commission Expires: 6-18-15



# **EXHIBIT B**

1 Stephen B. Coleman (State Bar #021715)  
2 **JACKSON LEWIS LLP**  
2398 East Camelback Road, Suite 1060  
3 Phoenix, AZ 85016  
4 Tel. (602) 714-7044  
Fax (602) 714-7045  
5 Stephen.Coleman@jacksonlewis.com

6 **Pro Hac Vice Pending**  
7 Iwana Rademaekers (TX Bar No. 16452560)  
8 **JACKSON LEWIS LLP**  
500 N. Akard, Ste 2500  
9 Dallas, Texas 75201  
Tel. (214) 520-2400  
10 Fax. (214) 520-2008/  
rademaei@jacksonlewis.com

11 Attorneys for Defendants

12  
13  
14 UNITED STATES DISTRICT COURT

15 FOR THE DISTRICT OF ARIZONA

16 Herb Nelson, a married man,  
17  
18 Plaintiff,  
vs.

19 Liberty Life Assurance Company of  
Boston Group Long Term Disability  
20 Insurance Policy No. GF3-850-289008-  
01, an ERISA benefit plan; HD Supply,  
21 Inc., a plan administrator,

22 Defendants.

Case No.: \_\_\_\_\_

**DEFENDANT HD SUPPLY,  
INC.'S CONSENT TO NOTICE  
OF REMOVAL**

23  
24 HD Supply, Inc. ("HD Supply"), Defendant herein, files this Consent to  
25 Removal and in support would show the Court the following:  
26  
27  
28

1 1. Contemporaneously with the filing of this Consent, Defendant Liberty Life  
2 Assurance Company of Boston Group Long Term Disability Insurance Policy No. GF3-  
3 850-289008-01 filed a notice of removal.

4 2. HD Supply hereby gives notice to the Court and to all parties that it consents to  
5 the removal of Plaintiff's Complaint filed by Plaintiff Herb Nelson in Cae No. CV2012-  
6 016884, previously pending in the Superior Court, Maricopa County, Arizona, which has  
7 been removed into this United States District Court.  
8

9  
10 Signed this 5<sup>th</sup> day of March, 2013.  
11

12 **HD SUPPLY, INC.**

13  
14 By: Susan V. Stucker  
15 Typed Name: Susan V. Stucker  
16 Title: Vice President – Legal, Labor & Employment  
17  
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# **EXHIBIT C**

1 Stephen B. Coleman (State Bar #021715)  
2 **JACKSON LEWIS LLP**  
2398 East Camelback Road, Suite 1060  
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6 Attorneys for Defendants

8 IN THE SUPERIOR COURT OF ARIZONA

9 IN AND FOR MARICOPA COUNTY

10 Herb Nelson, a married man,

11 Plaintiff,

12 vs.

13 Liberty Life Assurance Company of  
14 Boston Group Long Term Disability  
Insurance Policy No. GF3-850-289008-  
15 01, an ERISA benefit plan; HD Supply,  
Inc., a plan administrator,

16 Defendants.

Case No.: CV2012-016884

**DEFENDANT'S NOTICE OF  
FILING NOTICE OF REMOVAL  
OF ACTION TO FEDERAL  
COURT**

18 Pursuant to Title 28 of the United States Code, Section 1446(d), Defendant  
19 Liberty Life Assurance Company of Boston Group Long Term Disability Insurance  
20 Policy No. GF3-850-289008-01 ("Defendant"), hereby give notice of the filing of a  
21 Notice of Removal, removing this action from this Court to the United States District  
22 Court for the District of Arizona. A copy of Defendant's Notice of Removal, filed this  
23 day in federal court, is attached hereto as Exhibit "A."

1 No further action need be taken by this Court, other than forwarding a complete  
2 copy of the record of this action to the United States District Court, unless and until  
3 this action is remanded to this Court. *See* 28 U.S.C. § 1446(d).

4  
5 RESPECTFULLY SUBMITTED this 6th day of March 2013.

6 JACKSON LEWIS LLP

7  
8 By: /s/Stephen B. Coleman  
9 Stephen B. Coleman  
Attorneys for Defendants

10  
11 **CERTIFICATE OF SERVICE**

12 I certify that a true and correct copy of the foregoing pleading was forwarded  
13 via first-class mail on the 6th day of March, 2013 to the following counsel of record:

14 Alan M. Schiffman, Esq.  
15 Schiffman Law Office, P.C.  
4506 North 12<sup>th</sup> Street  
Phoenix, AZ 85014

16  
17 Erin Ronstadt, Esq.  
Ronstadt Law Group, P.L.L.C.  
18 7303 W. Boston Street  
Chandler, AZ 85226

19  
20 Attorneys for Plaintiff

21 By: /s/Valerie Armstrong